

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,) C-20-05640 YGR
)
PLAINTIFF,) OAKLAND, CALIFORNIA
COUNTER-DEFENDANT)
) NOVEMBER 4, 2024
VS.)
) PAGES 1-9
APPLE, INC.,)
)
DEFENDANT,)
COUNTERCLAIMANT.)
_____)

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: CRAVATH, SWAINE & MOORE LLP
BY: GARY A. BORNSTEIN
YONATAN EVEN
375 NINTH AVENUE
NEW YORK, NEW YORK 10001

FOR THE DEFENDANT: WEIL, GOTSHAL & MANGES
BY: MARK A. PERRY
2001 M STREET NW, SUITE 600
WASHINGTON, D.C. 20036

GIBSON, DUNN & CRUTCHER LLP
BY: JASON C. LO
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071

REMOTE REPORTED BY: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 OAKLAND, CALIFORNIA NOVEMBER 4, 2024

2 P R O C E E D I N G S

3 (ZOOM PROCEEDINGS CONVENED AT 2:27 P.M.)

4 THE CLERK: GOOD AFTERNOON, EVERYONE.

5 THESE PROCEEDINGS ARE BEING COURT REPORTED BY THIS COURT.

6 ANY OTHER RECORDING OF THIS PROCEEDING, EITHER BY VIDEO, AUDIO,

7 INCLUDING SCREENSHOTS, ARE STRICTLY PROHIBITED.

8 YOUR HONOR, NOW CALLING THE CIVIL MATTER 20-CV-5640-YGR,

9 EPIC GAMES, INCORPORATED VERSUS APPLE, INCORPORATED.

10 PARTIES, PLEASE STATE YOUR APPEARANCES FOR THE RECORD,

11 STARTING WITH THE PLAINTIFFS.

12 MR. BORNSTEIN: GOOD AFTERNOON, YOUR HONOR.

13 GARY BORNSTEIN FOR PLAINTIFF EPIC GAMES.

14 THE COURT: GOOD AFTERNOON.

15 MR. EVEN: GOOD AFTERNOON, YOUR HONOR.

16 YONATAN EVEN FOR EPIC GAMES.

17 THE COURT: GOOD AFTERNOON.

18 MR. PERRY: GOOD AFTERNOON, YOUR HONOR.

19 MARK PERRY FOR APPLE.

20 THE COURT: GOOD AFTERNOON.

21 MR. LO: GOOD AFTERNOON.

22 JASON LO ON BEHALF OF APPLE AS WELL.

23 THE COURT: OKAY. GOOD AFTERNOON.

24 I GOT THE MOTION TO VACATE MY ORDER WITH RESPECT TO

25 WITNESS COMMUNICATIONS, MR. PERRY. I THOUGHT IT WAS MUCH

1 EASIER TO DO THIS ON A HEARING RATHER THAN DEAL WITH IT ON
2 PAPER.

3 MR. PERRY: CERTAINLY, YOUR HONOR.

4 THE COURT: DO YOU WISH TO BE HEARD BEYOND WHAT
5 YOU'VE WRITTEN?

6 MR. PERRY: UNLESS THE COURT HAS QUESTIONS, IT'S
7 REALLY A MATTER OF, YOU KNOW, THE -- WHETHER OR NOT WE CAN
8 DISCUSS THE DOCUMENTS WITH THE WITNESSES GOING INTO THE
9 HEARING. WE JUST WANT TO MAKE SURE THE GROUND RULES ARE CLEAR
10 SO THAT WE STAY -- THEY'RE CLEAR NOW, TO BE CLEAR. WE JUST
11 WANT TO MAKE SURE --

12 THE COURT: HOLD ON, MR. PERRY. I'M HAVING A HARD
13 TIME HEARING YOU, AND MAYBE IT'S -- MAYBE IT'S MY VOLUME. LET
14 ME JUST INCREASE IT.

15 (PAUSE IN PROCEEDINGS.)

16 THE COURT: GO AHEAD.

17 MR. PERRY: CAN YOU HEAR ME NOW, YOUR HONOR?

18 THE COURT: YEAH, I CAN. I JUST INCREASED MY VOLUME.
19 THANKS.

20 MR. PERRY: OKAY. WE HAVE NOTHING TO ADD TO THE
21 PAPERS, YOUR HONOR, UNLESS THE COURT HAS QUESTIONS.

22 WE JUST WANTED TO MAKE SURE THE GROUND RULES WERE CLEAR AS
23 WE MOVE INTO THE NEXT PHASE GIVEN THE DOCUMENTS AND THE
24 WITNESSES.

25 THE COURT: OKAY.

1 ANYTHING FROM THE OTHER SIDE?

2 MR. BORNSTEIN: NO, YOUR HONOR. ABSENT QUESTIONS
3 FROM THE COURT, WE'LL RELY ON THE PAPERS.

4 THE COURT: OKAY. WELL, THEN MAYBE IT WAS EASIER FOR
5 ME TO JUST PUT THIS ON A -- BY HEARING -- I MEAN BY WRITING.

6 SO THE REQUEST IS DENIED. I -- LOOK, YOUR FOLKS CAME IN
7 HERE AND THEY TOLD ME HOW AND WHY THEY DID WHAT THEY DID, AND I
8 EXPECT, FROM YOUR PERSPECTIVE, THE DOCUMENTS WILL BE CONSISTENT
9 WITH THAT TESTIMONY.

10 IF IT'S NOT CONSISTENT WITH THAT TESTIMONY, THEY DON'T GET
11 TO -- THEY DON'T -- THEY -- THEY DON'T GET TO AVOID WHAT THE
12 DOCUMENTS SAY.

13 SO I DON'T THINK IT'S APPROPRIATE. I MEAN, LIKE I SAID,
14 EVERYTHING THAT WE'RE TALKING ABOUT IS HISTORIC. ALL OF YOUR
15 COMMUNICATIONS, THEY'VE NOT BEEN CONSTRAINED IN ANY WAY, SHAPE,
16 OR FORM TO TALK ABOUT ONGOING FORWARD OPERATIONS.

17 BUT GIVEN SOME OF THE THINGS THAT WERE SUBMITTED UNDER
18 SEAL, I HAVE A LITTLE BIT OF CONCERN, AND I NEED TO -- I NEED
19 TO BE -- I NEED TO HAVE THIS PROCEEDING DONE IN A WAY THAT
20 GIVES ME THE MOST ASSURANCE THAT I'M BEING -- THAT WE'RE
21 GETTING TO THE TRUTH OF WHAT HAPPENED.

22 MR. PERRY: UNDERSTOOD, YOUR HONOR.

23 THE COURT: SO I WOULD LIKE TO KNOW WHERE WE ARE
24 BECAUSE I WOULD LIKE TO GET THIS FINISHED.

25 SO WHEN CAN I SET A HEARING TO FINISH THIS OFF?

1 MR. BORNSTEIN: WELL, YOUR HONOR, I CAN START, IF
2 THAT WOULD BE HELPFUL.

3 WE -- AS I THINK YOUR HONOR KNOWS FROM THE CASE MANAGEMENT
4 STATEMENT WE SUBMITTED, WE HAVE AN ONGOING DISPUTE WITH APPLE
5 ON SOME DISCOVERY ISSUES, IN PARTICULAR A PRIVILEGE ISSUE THAT
6 IS BEFORE MAGISTRATE JUDGE HIXSON NOW. HE HAS BEEN INCREDIBLY
7 RESPONSIVE AND HELPFUL THROUGH THE PROCESS. WE'RE GRATEFUL FOR
8 ALL OF HIS ASSISTANCE ON THIS.

9 IF PAST IS PROLOGUE, I WOULD EXPECT THAT MAGISTRATE
10 JUDGE HIXSON WOULD RESPOND VERY PROMPTLY TO THE CURRENT DISPUTE
11 AND GIVE THE PARTIES THE GUIDANCE THAT HE'S BEEN GIVING US ALL
12 ALONG.

13 AND ONCE WE GET THAT FROM HIM, I'M HOPEFUL THAT WE CAN GET
14 THE DOCUMENTS THAT WE'RE ENTITLED TO AND THEN GET BACK IN COURT
15 AS QUICKLY AS WE GET THOSE MATERIALS.

16 BUT I DON'T -- I DON'T WANT US TO DO ANOTHER ROUND, IF IT
17 CAN BE AVOIDED, OF, YOU KNOW, COMING IN AND SEEING YOUR HONOR
18 AND THEN DISCOVERING THAT THERE'S MORE MATERIAL THAT WOULD BE
19 HELPFUL FOR YOUR HONOR TO REVIEW AND TO HAVE IN THE RECORD.

20 SO WE WANT TO GET THAT MATERIAL FIRST BEFORE WE COME AND
21 TAKE MORE OF YOUR HONOR'S TIME, AND WE WANT TO DO THAT AS
22 QUICKLY AS IS REASONABLE.

23 THE COURT: ONCE YOU GET THOSE DOCUMENTS, HOW LONG DO
24 YOU THINK THIS IS GOING TO TAKE?

25 MR. BORNSTEIN: YOU MEAN IN TERMS OF REVIEWING THE

1 DOCUMENTS, YOUR HONOR, OR HOW MUCH MORE COURT TIME?

2 THE COURT: BOTH.

3 MR. BORNSTEIN: SO WE'RE AWARE THAT THERE ARE 57,000
4 DOCUMENTS THAT HAVE BEEN --

5 THE COURT: AND IS THAT 57,000 PAGES OR 57,000
6 DOCUMENTS?

7 MR. BORNSTEIN: DOCUMENTS, YOUR HONOR.

8 NOW, I FULLY EXPECT THAT SOME PORTION OF THOSE ARE
9 LEGITIMATE PRIVILEGE CLAIMS.

10 BUT I FULLY EXPECT, BASED ON WHAT WE'VE SEEN, THAT SOME
11 MEANINGFUL PORTION, OR NOT -- I'M SURE THAT WHEN WE GET THE
12 MATERIALS THAT WE'RE ENTITLED TO, WE WILL DEVOTE, YOU KNOW, ALL
13 THE RESOURCES WE CAN TO GET THROUGH THOSE AS PROMPTLY AS WE
14 CAN. WE WANT THIS TO MOVE ON.

15 SO DEPENDING ON THE VOLUME, YOUR HONOR, I WOULD THINK WE
16 CAN GET THROUGH WHATEVER WE RECEIVE IN, YOU KNOW, TWO WEEKS OR
17 SO ONCE WE GET THE MATERIALS TO UNDERSTAND WHAT'S THERE, AND
18 THEN WE CAN GET ON YOUR HONOR'S CALENDAR.

19 I RECOGNIZE YOUR HONOR'S CALENDAR IS A DIFFICULT, A
20 DIFFICULT THING TO GET ON, BUT WE'LL GET ON THERE AS SOON AS
21 THE COURT CAN ACCOMMODATE US.

22 WE'LL HAVE TO GET THROUGH THE MATERIALS AND GET THE
23 WITNESSES, GET THE WITNESSES THERE TO SEE THE COURT.

24 IN TERMS OF AMOUNT OF TIME -- I'M SORRY, YOUR HONOR.

25 THE COURT: JANUARY 13TH. WE'LL SET THAT

1 TENTATIVELY.

2 MR. BORNSTEIN: THAT SHOULD BE FINE, YOUR HONOR, IF
3 YOUR HONOR WILL PERMIT US TO CONSULT SCHEDULES ON OUR SIDE AND
4 CHECK WITH MY CLIENT. BUT I DON'T SEE ANY REASON WHY, AS A
5 MATTER OF TIMING, THAT THAT SHOULDN'T WORK, ASSUMING WE GET
6 THOSE MATERIALS.

7 THE COURT: MR. PERRY?

8 MR. PERRY: YES, YOUR HONOR, AS TO JANUARY 13TH
9 TENTATIVELY.

10 AS WE NOTED IN THE CASE MANAGEMENT CONFERENCE STATEMENT,
11 WE DO HAVE A TRIAL BEGINNING IN THE U.K. INVOLVING OVERLAPPING
12 ISSUES. IT'S AN ANTITRUST CASE INVOLVING THE APP STORE. THERE
13 MAY OR MAY NOT BE AN OVERLAP IN WITNESSES. I BELIEVE WE DON'T
14 ACTUALLY HAVE A FINAL WITNESS LIST IN THE U.K. PROCEEDING YET,
15 BUT THAT WILL BE A MATTER OF COORDINATION RATHER THAN CONFLICT.

16 AS FAR AS -- AND I AGREE WITH MR. BORNSTEIN, ONCE WE GET
17 TO THE CONCLUSION OF DISCOVERY -- AND JUDGE HIXSON HAS BEEN
18 WORKING WITH ALL OF US. WE NEED TO PUT AN END TO THAT PIECE
19 AND MOVE FORWARD.

20 I DON'T KNOW THAT IT'LL BE RESOLVED SOON ENOUGH FOR
21 JANUARY 13TH, BUT I SUSPECT IT WILL BE. THERE'S ONE REQUEST
22 AND WE'LL GET IT RESOLVED AND IT'S FULLY BRIEFED IN FRONT OF
23 JUDGE HIXSON.

24 SO I THINK THAT WILL WORK, BUT THE COURT SAID TENTATIVE --

25 THE COURT: LET US SHOOT FOR THAT, BECAUSE THEN I GO

1 INTO BACK-TO-BACK TRIALS, AND THEY MAY NOT GO, BUT THEY'RE
2 STILL ALREADY ON THE CALENDAR.

3 SO THEY MAY RESOLVE, BUT, YOU KNOW, WE'RE MOVING INTO THE
4 HOLIDAYS, AND THINGS ARE ALREADY PACKED, AND I'M GOING TO TAKE
5 A VACATION FOR AT LEAST A WEEK.

6 SO THAT BRINGS US INTO JANUARY, AND I WOULD RATHER JUST
7 GET ON YOUR CALENDAR NOW.

8 MR. BORNSTEIN: WE APPRECIATE THAT, YOUR HONOR, AND
9 WE WILL BLOCK THAT OFF ON OUR SIDE.

10 AS MR. PERRY SAID, THERE'S THE ONE MATTER IN FRONT OF
11 MAGISTRATE JUDGE HIXSON NOW ON PRIVILEGE. I'M HOPEFUL THAT
12 WHATEVER GUIDANCE WE GET FROM THE COURT WILL BE DULY
13 IMPLEMENTED AND WE WON'T HAVE FURTHER DISPUTES.

14 AS WE NOTED IN THE CASE MANAGEMENT STATEMENT, WE ARE DOING
15 SOME FURTHER ANALYSIS ON A RESPONSIVENESS ISSUE. I'M HOPEFUL
16 WE CAN RESOLVE THAT CONSENSUALLY. IF NOT, WE MAY HAVE
17 SOMETHING FOR THE MAGISTRATE JUDGE. BUT THAT'S NOT CURRENTLY
18 IN FRONT OF HIM.

19 THE COURT: ALL RIGHT. WELL, LET'S DO THIS THEN:
20 LET'S GO AHEAD AND PUT YOU ON THE CALENDAR FOR A CASE
21 MANAGEMENT CONFERENCE DECEMBER 15TH AT 2:00 P.M., OR WE'LL SAY
22 2:30 P.M. I TEND TO SET YOU SEPARATELY. WE SHOULD KNOW THEN,
23 OBVIOUSLY, IF WE'RE GOING TO GO A MONTH LATER.

24 MR. BORNSTEIN: THAT'S GREAT, YOUR HONOR.

25 DID YOUR HONOR SAY DECEMBER 15? THAT'S SHOWING UP AS A

1 SUNDAY ON MY CALENDAR.

2 THE COURT: THE 16TH, SORRY. I WAS LOOKING AT THE
3 WRONG YEAR.

4 MR. PERRY: GREAT. OKAY. THANK YOU, YOUR HONOR.

5 THE COURT: AT 2:30. OKAY?

6 ALL RIGHT. HAPPY FALL. SEE YOU IN DECEMBER.

7 MR. BORNSTEIN: THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU.

9 MR. PERRY: THANK YOU, YOUR HONOR.

10 THE CLERK: COURT IS ADJOURNED.

11 (THE PROCEEDINGS WERE CONCLUDED AT 2:37 P.M.)

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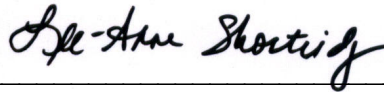
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: NOVEMBER 13, 2024